


**POLICE CRIMINAL COMPLAINT**

Docket Number	Date Filed <b>06/11/2019</b>	OTN/LiveScan Number	Complaint/Incident Number <b>00683465/190008846</b>
Defendant Name	First <b>KARIMU</b>	Middle	Last <b>HAMILTON</b>

2. I ask that a warrant of arrest or a summons be issued and that the defendant be required to answer the charges I have made.
3. I verify that the facts set forth in this complaint are true and correct to the best of my knowledge or information and belief. This verification is made subject to the penalties of section 4904 of the Crimes Code (18 PA C.C. 4904) relating to unsworn falsification to authorities.
4. This complaint is comprised of the preceding page(s) numbered 1 through 2.
5. I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

The acts committed by the accused, as listed and hereafter, were against the peace and dignity of the Commonwealth of Pennsylvania and were contrary to the Act(s) of Assembly, or in violation of the statutes cited. **(Before a warrant of arrest can be issued, an affidavit of probable cause must be completed, sworn to before the issuing authority, and attached.)**

June 11, 2019 (Date)  (Signature of Affiant)

AND NOW, on this date June 15, 2018 certify that the complaint has been properly completed and verified.  
An affidavit of probable cause must be completed before a warrant can be issued.

**32-1-27**  
(Magisterial District Court Number)





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Defendant Name	First <b>KARIMU</b>	Middle	Last <b>HAMILTON</b>

**AFFIDAVIT of PROBABLE CAUSE**

On June 10, 2019 around 1200 hours I, Detective Jonathan Jagodinski of the Radnor Township Police Department, was on duty and assigned to the Investigations Division. At that time Rachel Ridgeway came to the Radnor Township Police Department Headquarters regarding an incident which occurred on June 8, 2019 between 1700 hours and 2130 hours. Ridgeway stated during that time period Hamilton, while standing on Hamilton's portion of their shared front porch, yelled obscenities and threats at her. Ridgeway stated during that time Hamilton called her a "dumb ass white cracker bitch." Ridgeway stated Hamilton also stated "watch what I do to you bitch", "you better stay behind those fucking doors bitch" and "fucked up cunt cracker bitch, keep fucking with me bitch." Further, Ridgeway stated Hamilton expressed to her that she should "get the fuck out of here" and that she "need to move bitch." Ridgeway stated Hamilton stopped the above activity around 2130 hours on June 8, 2019 and resumed yelling at 0600 hours on June 9, 2019. Ridgeway stated Hamilton continued yelling, which included similar content as the above, until Ridgeway left for church at 0940 hours. Ridgeway completed a written statement regarding the above.

Due to the above information I, Detective Jonathan Jagodinski of the Radnor Township Police Department, respectfully request that Karimu Hamilton be called to answer to the listed charges.

I, **OFFICER JONATHAN JAGODINSKI (95)**, BEING DULY SWORN ACCORDING TO THE LAW, DEPOSE AND SAY THAT THE FACTS SET FORTH IN THE FOREGOING AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

I CERTIFY THAT THIS FILING COMPLIES WITH THE PROVISIONS OF THE *CASE RECORDS PUBLIC ACCESS POLICY OF THE UNIFIED JUDICIAL SYSTEM OF PENNSYLVANIA* THAT REQUIRE FILING CONFIDENTIAL INFORMATION AND DOCUMENTS DIFFERENTLY THAN NON-CONFIDENTIAL INFORMATION AND DOCUMENTS.

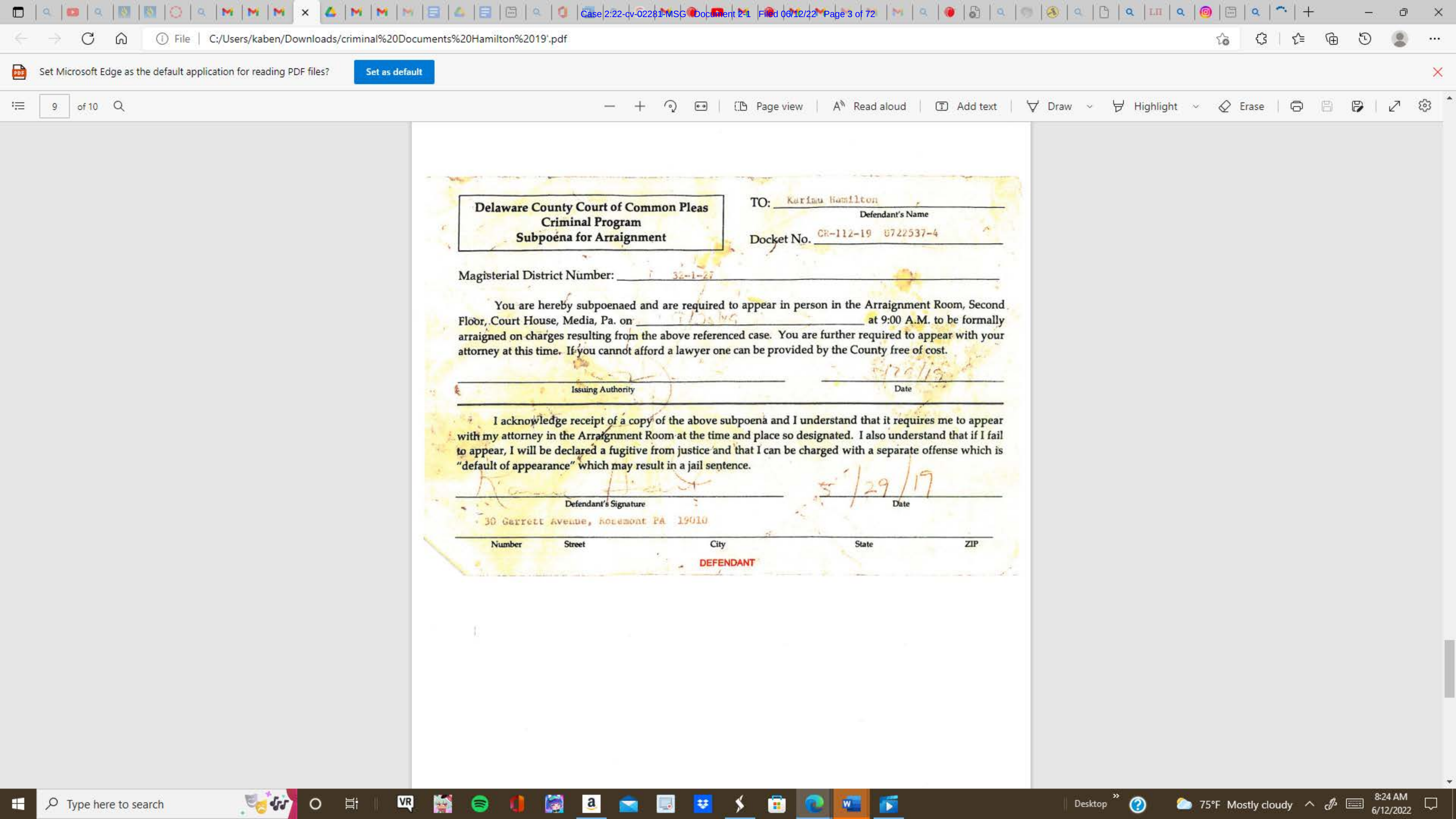
(Signature of Affiant)

Sworn to me and subscribed before me this 15th day of June, 2019

\_\_\_\_\_, Date \_\_\_\_\_, Magisterial District Judge

My commission expires first Monday of January, 2021





**Delaware County Court of Common Pleas  
Criminal Program  
Subpoena for Arraignment**

TO: Karima Hamilton  
Defendant's Name

Docket No. CR-112-19 8722537-4

Magisterial District Number: 32-1-27

You are hereby subpoenaed and are required to appear in person in the Arraignment Room, Second Floor, Court House, Media, Pa. on 6/12/22 at 9:00 A.M. to be formally arraigned on charges resulting from the above referenced case. You are further required to appear with your attorney at this time. If you cannot afford a lawyer one can be provided by the County free of cost.

\_\_\_\_\_  
Issuing Authority Date

I acknowledge receipt of a copy of the above subpoena and I understand that it requires me to appear with my attorney in the Arraignment Room at the time and place so designated. I also understand that if I fail to appear, I will be declared a fugitive from justice and that I can be charged with a separate offense which is "default of appearance" which may result in a jail sentence.

\_\_\_\_\_  
Defendant's Signature Date

30 Garrett Avenue, Rosemont PA 19010

\_\_\_\_\_  
Number Street City State ZIP

**DEFENDANT**



**WAIVER OF RULE 600 AND SPEEDY TRIAL RIGHTS**

**NOTICE TO DEFENDANT:** Read everything on this paper and Understand it before you sign.  
You are Giving Up important rights by signing this paper.

I, Karimu Hamilton, have read this paper and discussed its meaning with my attorney. I understand this document and I freely agree to waive (give up) my Rule 600 and Speed Trial Rights by signing this document. I understand that under Rule 600 the charges against me must be brought to trial within 365 days from the date on which the criminal complaint was filed (or 120 days from the granting of a new trial or the withdrawal of a guilty plea), except that any of the following periods of time are added to the 365 day period.

- 1) any time period between the filing of the criminal complaint and my arrest during which my whereabouts were unknown to authorities and could not be determined by their due diligence; or
- 2) any time period for which I expressly waive (give up) my rights under Rule 600, (such as my signing of this paper today); or
- 3) any delay caused by the unavailability of me or my attorney, or by any continuance granted at my request or the request of my attorney.

I further understand that if I am in prison on this offense for 180 days prior to trial, plus any of the three time periods above, I am entitled to release on nominal bail pending my trial. I understand that if I am not brought to trial within the 365 day time period required by Rule 600, the charges against me in this case will be dismissed, and I will never be tried on these offenses, unless the Court finds that the Commonwealth has exercised due diligence in attempting to be prepared to proceed to trial.

I also understand that I have a right to a speed trial under the United States and Pennsylvania Constitutions. I understand that under these Constitutions a judge can dismiss the charges against me if it is determined that the length of delay between the crime and my trial, the reasons for the delay, my requests (if any) to be tried, and prejudice to me requires such a dismissal.

I am not under the influence of alcohol, or drugs or any other substance. I do not suffer from mental illness or anything else, which would prevent me from understanding this document and what I am doing. I am signing this paper voluntarily and of my own free will. I have not been threatened or pressured or promised anything by anyone to make me sign this paper.

I agree to waive (give up) all of my speed trial rights under Rule 600 and the United States and Pennsylvania Constitutions from 8-1-19, 20  , to 8-15-19, 20  .

I understand that my Preliminary Hearing date is 8-15-19.

*X Refused to sign*  
(Defendant)

As attorney for the defendant in this matter, I have discussed this document and its legal meaning with my client. I believe that this waiver is being made knowingly, intelligently and voluntarily.

*X [Signature]*  
(Counsel for Defendant)



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IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY  
PENNSYLVANIA  
CRIMINAL DIVISION

\* \* \* \* \* No. CR-112-19  
\*  
COMMONWEALTH OF PENNSYLVANIA \*  
\*  
VS. \*  
\*  
KARIMU HAMILTON \*  
\*  
\* \* \* \* \*

Newtown Square, PA, August 29, 2019

\*\*\*

Regional Court Number 32-1-27

\*\*\*

TRANSCRIPT OF PROCEEDINGS

BEFORE: THE HONORABLE DAVID R. LANG  
  
BRITTANY GREEN, ESQUIRE  
For the Commonwealth  
  
THOMAS MARTINICCHIO, ESQUIRE  
For the Defendant



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DIRECT CROSS REDIRECT RECROSS

ON BEHALF OF THE COMMONWEALTH:

Rachel Ridgeway 8 13 18

ON BEHALF OF THE DEFENDANT:

[None]

EXHIBITS

MARKED ADMITTED

ON BEHALF OF THE COMMONWEALTH:

[None]

ON BEHALF OF THE DEFENDANT:

[None]



1 P R O C E E D I N G S

2 August 29, 2019

3 THE COURT:

4 Okay. This is the matter of the Commonwealth  
5 of Pennsylvania versus -- is it Karamoo [ph]?

6 MS. HAMILTON:

7 Karimu.

8 THE COURT:

9 Karimu? Karimu Hamilton. This is CR-112-19.  
10 The Defendant is present in court. Would  
11 counsel -- Counsel, if you would tell me what  
12 your -- your appearance, please.

13 MR. MARTINICCHIO:

14 Thomas Martinicchio, Attorney ID 321694, on  
15 behalf of the Defendant, Karimu Hamilton,  
16 present seated to my right of the defense  
17 table. However, Judge, at this time I would  
18 not waive the reading of the criminal  
19 Complaint. I would like that to be read on  
20 the record, and I would make a motion before  
21 we get started here today.

22 THE COURT:

23 Well, why don't you tell me what the motion is  
24 going to be.

25 MR. MARTINICCHIO:

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1 Judge, the motion would be based on the  
2 Affidavit of Probable Cause even if we were  
3 taking everything in here to be true, there's  
4 nothing here that indicates that any  
5 terroristic threats were made. There were  
6 some things that were said that involved  
7 obscenities or anything like that. There is a  
8 statement that says, you know, watch what I do  
9 to you, bitch. However, even in the light  
10 most favorable to the Commonwealth, watch what  
11 I do to you, that doesn't have -- doesn't  
12 necessarily mean physical harm. It could be  
13 in eviction. It could be, you know, filing  
14 paperwork, you know, with the police  
15 department. I don't believe that any of these  
16 quotes that are stated here you need to move,  
17 get the F out of here, you know, dumb ass.

18 THE COURT:

19 It doesn't -- isn't that an issue that, you  
20 know, the Commonwealth is going to put on the  
21 testimony, and then I have to make a decision  
22 whether or not there's a prima facie case.

23 MR. MARTINICCHIO:

24 Yes, Judge. And my -- what I was just trying  
25 to do is based on the report here, I would say

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1                   that...

2       THE COURT:

3                   Yeah.

4       MR. MARTINICCIO:

5                   ...the Court doesn't have enough.

6       THE COURT:

7                   I understand, but you know...

8       MR. MARTINICCHIO:

9                   That would be my argument, Judge.

10      THE COURT:

11                  But I understand. I'm not going to -- you  
12                  know, but I'm not going to do that because,  
13                  look, we all know that that sometimes what's  
14                  in here isn't necessarily always everything.  
15                  Okay. So there may be other things that are  
16                  going to be said today, so, you know, let's  
17                  wait and see what the testimony is, and then  
18                  I'll make a decision. Because it may end up  
19                  being more than what's just in the Affidavit  
20                  of Probable Cause.

21      MR. MARTINICCHIO:

22                  Understood, Judge, and just for the record, I  
23                  would just object that it's the Commonwealth  
24                  and the officer's burden to include everything  
25                  to -- in the Affidavit.

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1 THE COURT:

2 Yeah. I understand, but we know that doesn't  
3 always happen.

4 MR. MARTINICCHIO:

5 I know, Judge. Understood.

6 THE COURT:

7 Okay. That's fine. For the Commonwealth?

8 MS. GREEN:

9 Good afternoon, Your Honor. Brittany Green on  
10 behalf of the Commonwealth, Attorney ID  
11 325781.

12 THE COURT:

13 Okay. All right. Anything that we're going  
14 to be amending here before we proceed?

15 MS. GREEN:

16 No, Your Honor.

17 THE COURT:

18 Are you neighbors?

19 MS. RIDGEWAY:

20 Yes, Your Honor.

21 THE COURT:

22 Have there been any discussions about getting  
23 this thing worked out, rather than having a  
24 preliminary hearing on something like this?

25 MS. GREEN:



1           Your Honor, I've spoken to the detective and  
2           I've spoken to the victim.

3 MR. MARTINICCHIO:

4 Judge, our office didn't receive any offers.

5 THE COURT:

6                    So we want to -- okay. That's fine. All  
7                    right. Go ahead.

8 MS. GREEN:

9                   At this time, Your Honor, the Commonwealth  
10                   calls Rachel Ridgeway to the stand.

11 \*\*\*

12 [Witness Sworn]

13 \*\*\*

14 THE COURT:

15           Okay. Have a seat, please. Give us your full  
16           name, and spell your last name for the record,  
17           please.

18 MS. RIDGEWAY:

19 Rachel Ridgeway, R-i-d-g-e-w-a-y.

20 THE COURT:

21 Thank you. You may proceed.

22 MS. GREEN:

23 Thank you, Your Honor.

24 \*\*\*

25 RACHEL RIDGEWAY,  
York Stenographic Services, Inc.  
34 North George St., York, PA 17401 - (717) 854-0077



1       having been first duly sworn, was called as a witness  
2       herein and was examined and testified as follows:

\* \* \*

## DIRECT EXAMINATION

5 BY MS. GREEN:

6 Q. Ms. Ridgeway, I'm going to direct your  
7 attention back to June 8, 2019, around 5:00 p.m. On  
8 that date and at that time were you living at 30 Garrett  
9 Avenue in Rosemont, Delaware County?

10 A. 32.

11 Q. 32?

12 A. Yes.

13 Q. Okay. And was there something that  
14 occurred that you reported to the police?

15           A.     So the police had just left the premises,  
16     and yes, then afterwards the Defendant came outside. We  
17     have a shared porch, and started screaming threats and  
18     profanity.

19 Q. So you said the Defendant. Is the person  
20 who came out on the -- who shares the porch with you and  
21 who was yelling, is she in the courtroom today?

22 A. Yes.

23 Q. Can you identify her by a piece of  
24 clothing she's wearing today?

25                   A.     She's wearing a polka dot dress.

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1 \*\*\*

2 MS. GREEN:

3 Your Honor, let the record reflect the  
4 witness'...

5 THE COURT:

6 I'll note it.

7 MS. GREEN:

8 Thank you.

9 \*\*\*

10 BY MS. GREEN:

11 Q. Now, you said that you have a shared  
12 porch, and that the Defendant came out onto the porch.  
13 Where was she in conjunction to where you were?

14 A. So I didn't look out my window, but our  
15 porch is small. So she would have been directly outside  
16 of my front door.

17 Q. And you said that you heard her making  
18 threats and comments. Do you recall what she was  
19 saying?

20 A. Yes. She told me to wait and see what  
21 she was going to do to me. She told -- she said that I  
22 should move. She called me -- I don't remember exactly,  
23 but it was along the lines of dumb cracker bitch, and...

24 Q. Did you write a written statement...

25 A. I did.

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1 Q. ...in regards -- would looking at that  
2 refresh your recollection?

3                    A.    It would.    Yes.

4 \*\*\*

5 MS. GREEN:

6           Your Honor, I have what I'd like to mark as  
7           C-1 for identification purposes. I can give  
8           you a copy after...

9 MR. MARTINICCHIO:

10 Yes.

11 MS. GREEN:

12 May I approach?

13 THE COURT:

14 Yes.

15 \*\*\*

16 BY MS. GREEN:

17 Q. I'm handing you what's been marked as  
18 C-1. Do you recognize it?

19 A. Yes.

20 Q. And what is it?

21                   A.     It's the statement I wrote on Monday with  
22     the officers.

23 Q. Okay. And is it based off of the  
24 incident that had occurred that we're talking about?

25 A. Yes.



1           Q.    Okay.  And why don't you tell me what you  
2    had written that the Defendant had said to you.

3           A.    So she called me a dumb ass white cracker  
4    bitch, and said watch what I do to you, bitch.  She said  
5    that I didn't know who I was fucking with, and that I  
6    needed to move.  She called me a fucked-up cunt cracker  
7    bitch, and said keep fucking with me.  And she  
8    repeatedly accused my husband of adultery.  She said  
9    several times that I needed to keep my stepdaughter's  
10   car the fuck off her property, which I wasn't quite sure  
11   what that meant.  And just continued on about it.

12          Q.    Now I just want to specify, did this  
13   occur over a short period of time?

14          A.    No.  It started about five, and then it  
15   didn't stop until after nine.

16          Q.    Nine o'clock?

17          A.    Yes.

18          Q.    So it's approximately four hours?

19          A.    Approximately four hours on and off.

20   Yes.

21          Q.    And were you alone in your home?

22          A.    I was home with my son -- my two-year-old  
23   son, and my 18-year-old stepdaughter was there for a  
24   brief period of time.

25          Q.    And when the Defendant was outside of  
                  York Stenographic Services, Inc.

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1       your home you said outside of the door, how did you feel  
2       when these things were being said?

3               A.    I was scared.

4               Q.    And why were you scared?

5               A.    I have kids, and you know, we share a  
6       wall. We basically share a property. So for me that  
7       was scary.

8                               \*\*\*

9       MS. GREEN:

10               Okay. Court's indulgence, Your Honor.

11                               \*\*\*

12       BY MS. GREEN:

13               Q.    Now did anything happen the next day?

14               A.    The next morning it started again at  
15       about six in the morning. She started yelling the same  
16       things, telling us to move, and that I was the dumb  
17       bitch. By the time I left the house -- I think I left  
18       around 9:30 to go to church, and it had stopped by then.

19                               \*\*\*

20       MS. GREEN:

21               Your Honor, I have nothing further at this  
22       time.

23       THE COURT:

24               Go ahead, Counsel.

25                               \*\*\*



1 CROSS EXAMINATION

2 BY MR. MARTINICCHIO:

3 Q. Good afternoon, ma'am. So you had  
4 indicated -- you said that this happened right after  
5 police just left the premises. Police were at your  
6 premises earlier that day?

7 A. That's correct.

8 Q. And is that because my client had called  
9 police and made an incident report regarding you  
10 harassing her, and reporting gas odors consistently to  
11 PECO?

12 \*\*\*

13 MS. GREEN:

14 Objection, Your Honor, to the relevance.

15 MR. MARTINICCHIO:

16 Judge, I think this is retaliation is what our  
17 argument would be.

18 THE COURT:

19 Well, no, but if -- I'm going to overrule the  
20 objection, and I mean that's what's in the  
21 Affidavit, and that's what you testified to.  
22 It's cross examination. Go ahead.

23 MS. RIDGEWAY:

24 Should I answer?

25 THE COURT:



1                    You certainly can.

2 MS. RIDGEWAY:

3           Okay. I had called the police due to an odor  
4           smell in my house earlier that -- a sewage  
5           smell earlier that was in my house. It was  
6           the second time that that had occurred. And  
7           previously, they had come in and done gas  
8           readings. So I had called 911 again, because  
9           I was concerned.

10 \*\*\*

11 BY MR. MARTINICCHIO:

12 Q. Okay. Now did PECO investigate your  
13 house?

14 A. Yes.

15 Q. At that time? And they investigated her  
16 house, correct?

17 A. Yes.

18 Q. Okay.

19 \*\*\*

20 MS. GREEN:

21                   Your Honor, indicating her being the  
22                   Defendant.

23 THE COURT:

24 Yes.

25 \*\*\*



1 BY MR. MARTINICCHIO:

2 Q. And there was no leak reported, correct?

3 A. That's correct.

4 Q. And at that time my client -- is this the  
5 first time that you had called about a gas leak?

6 \*\*\*

7 MS. GREEN:

8 Objection, Your Honor, to the relevance.

9 THE COURT:

10 Yeah. I mean...

11 MR. MARTINICCHIO:

12 Okay.

13 THE COURT:

14 ...I'm going to assume that there's an ongoing  
15 male contention between these two individuals.  
16 So let me just say I know that they don't get  
17 along. So let's -- with that assumption,  
18 let's move on.

19 \*\*\*

20 BY MR. MARTINICCHIO:

21 Q. Okay. And so just to clarify, the police  
22 that had left the premises was that due to your call, or  
23 to my client's call?

24 A. Can you read the question?

25 Q. When you said police had just left the  
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1 premises wen my client had come out and started saying  
2 these things to you...

3 A. Yes.

4 Q. Was that due to you calling the police,  
5 or my client calling the police?

6 A. The police had come to the property  
7 because I had called them.

8 Q. Okay. And did you receive an incident  
9 report for that?

10 A. I did not.

11 \*\*\*

12 MR. MARTINICCHIO:

13 Okay. Court's indulgence.

14 \*\*\*

15 BY MR. MARTINICCHIO:

16 Q. So briefly, you said that she said this  
17 to you while you were outside. You share a common area?

18 A. She was outside.

19 Q. Of your home?

20 A. Yes.

21 Q. On your property? Or, on her side of the  
22 property?

23 A. I couldn't tell you. Our porch is --  
24 there's no divider for our porch...

25 Q. Okay.



1                   A.    So she was close enough that I was able  
2    to record it clearly.

3                   Q.    Okay. And you were outside at this time,  
4    or inside?

5                   A.    I was inside.

6                   Q.    You were inside? You were inside the  
7    duration of this time?

8                   A.    Yes.

9                   Q.    You never came outside once?

10                  A.    I was scared to come out.

11                  Q.    And you didn't call police? You weren't  
12   scared enough to call police?

13                  A.    The police had told me earlier that day,  
14   because I had asked them before they left what I was  
15   supposed to do, they had told me that there was nothing  
16   that they could do at that time. They strongly  
17   suggested that I come down to the township building  
18   Monday morning and file a report.

19                  Q.    Okay. But if you felt in fear of your  
20   life, you didn't think it was necessary to call the  
21   police at that time?

22                  A.    I was -- when I was inside my house I was  
23   not in fear of my life. I was not about to go outside  
24   of my house, and I had no reason to go outside of the  
25   house.



1 \*\*\*

2 MR. MARTINICCHIO:

3 Okay. Nothing further.

4 MS. GREEN:

5 Just briefly.

6 \*\*\*

7 REDIRECT EXAMINATION

8 BY MS. GREEN:

9 Q. Was there anything that came from the  
10 PECO investigation when you called?

11 A. Yes.

12 Q. What happened?

13 A. Ms. Hamilton has been condemned because  
14 there was sewage being sub-pumped out of the basement  
15 onto the side of her property.

16 Q. And that what was discovered when the  
17 police were there?

18 A. And there was a large amount of...

19 \*\*\*

20 MR. MARTINICCHIO:

21 Judge, objection.

22 MS. RIDGEWAY:

23 ...sewage in her basement.

24 MR. MARTINICCHIO:

25 Well, it's her testimony.



1 MS. GREEN:

2 Your Honor, he opened it up on cross.

3 MR. MARTINICCHIO:

4 Judge, that was her...

5 THE COURT:

6 Okay. You opened the door on that.

7 MR. MARTINICCHIO:

8 No. I understand. That's why...

9 MS. GREEN:

10 You're revoking your objection?

11 MR. MARTINICCHIO:

12 Well, no. She is. Objection...

13 MS. GREEN:

14 Understood.

15 MR. MARTINICCHIO:

16 Yeah.

17 THE COURT:

18 Go ahead.

19 \*\*\*

20 BY MS. GREEN:

21 Q. You said that it was from the incident  
22 what you had just described the results of that? That  
23 was from the incident when you called the police because  
24 of the sewage odor?

25 A. Yes. PECO reported that there was sewage  
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34 North George St., York, PA 17401 - (717) 854-0077



1     leakage in the basement, even though it wasn't -- there  
2     wasn't a gas reading.

3 \*\*\*

4 MS. GREEN:

5 Understood. Nothing further, Your Honor.

6 MR. MARTINICCHIO:

7                   And how do you know what PECO said about her  
8                   home?

9 THE COURT:

10                    You know what? Okay. I don't care.

11 MR. MARTINICCHIO:

12 Okay.

13 THE COURT:

14                   It has nothing to do with any of this.

15 MR. MARTINICCHIO:

16                    Okay.  So, Judge, we don't have any witnesses.

17 THE COURT:

18                      Thank you. You may step down, ma'am.

19 MS. GREEN:

20 That's the Commonwealth's case for purposes of  
21 the preliminary hearing.

22 MR. MARTINICCHIO:

23 I mean, Judge, we have one Terroristic Threat  
24 charge here.

25 THE COURT:



1                   That's fine. No. Terroristic Threat's not  
2                   made out. It's clear the case law says there  
3                   was some spontaneous ticked off. That's not  
4                   Terroristic Threats.

5           MS. GREEN:

6                   Well, Your Honor, my argument with that is...

7           THE COURT:

8                   I made a decision.

9           MS. GREEN:

10                   ...it's not...

11          THE COURT:

12                   The decision's made.

13          MS. GREEN:

14                   Understood.

15          THE COURT:

16                   Terroristic Threats is gone. So we have the  
17                   other two charges. I don't know how you guys  
18                   live next door to each other. I can't believe  
19                   that you guys can live next door to each  
20                   other, but -- and you haven't been able to try  
21                   and work this out. But that's...

22          MS. GREEN:

23                   Well, Your Honor, it's my understanding that  
24                   she does not live there at this time. The  
25                   house has been condemned.



1 THE COURT:

2 All right. Okay. So Terroristic Threats is  
3 not made out. Prima facie case made on the  
4 others.

5 MR. MARTINICCHIO:

6 I don't believe that she would have to have an  
7 arraignment, would she, if it's just the  
8 summaries that are being...

9 THE COURT:

10 Let me see.

11 UNIDENTIFIED FEMALE SPEAKER:

12 It says M-3 and M-3.

13 THE COURT:

14 Yeah. They're misdemeanors.

15 MS. GREEN:

16 Yes. Correct.

17 THE COURT:

18 Yeah. They're misdemeanors. Yeah.

19

20 [End of Proceeding]

21



C E R T I F I C A T E

I, Richard Coogan, hereby certify that the proceedings and evidence are contained fully and accurately on multitrack recording; that the recording was reduced to typewriting by my direction; and that this is a correct transcript of the same.

Richard Coogan, Administrator  
Court Reporters

YORK STENOGRAPHIC SERVICES, INC., hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings in the Court of Common Pleas of Delaware County, Pennsylvania, in the matter of:

COMMONWEALTH OF PENNSYLVANIA

vs.

KARIMU HAMILTON

CR-112-19

BY:



Donna M. Bupp  
Transcriber for  
York Stenographic Services, Inc.

DDB/CEG



1 IN THE COURT OF COMMON PLEAS OF DELAWARE COUNTY  
2 PENNSYLVANIA

3  
4 CRIMINAL COURT

5  
6 \* \* \* \* \* No. 5272-2019

7 \*  
8 COMMONWEALTH OF PENNSYLVANIA \*

9 \*  
10 VS. \*

11 \*  
12 KARIMU HAMILTON \*

13 \*  
14 \* \* \* \* \*

15  
16  
17  
18 Media, PA, October 4, 2021

19 \*\*\*

20  
21 Courtroom Number 6

22 \*\*\*

23  
24 TRANSCRIPT OF PROCEEDINGS

25  
26 BEFORE: THE HONORABLE JUDGE MARY ALICE BRENNAN

27  
28 JERRY RASSIAS, ESQUIRE  
29 For the Commonwealth

30  
31 J. MICHAEL CONSIDINE, ESQUIRE  
32 For the Defendant

33  
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INDEX

DIRECT CROSS REDIRECT RECROSS

ON BEHALF OF THE COMMONWEALTH:

[None]

ON BEHALF OF THE DEFENDANT:

[None]

EXHIBITS

MARKED ADMITTED

ON BEHALF OF THE COMMONWEALTH:

[None]

ON BEHALF OF THE DEFENDANT:

[None]



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P R O C E E D I N G S

October 4, 2021 (10:01 a.m.)

MR. RASSIAS: Attorney Rassias from the Commonwealth. When the Court's ready, can we address the matter for Karimu Hamilton?

THE COURT: Sure.

MR. RASSIAS: That's transcript 5272 of '19.

THE COURT: All right.

MR. RASSIAS: As I understand, this is a Motion to Dismiss or Motion to Quash. And just oral argument before Your Honor.

THE COURT: Okay. Good morning.

MR. CONSIDINE: Good morning. My name is J. Michael Considine, I represent Karimu Hamilton. Good morning, Your Honor. How are you?

THE COURT: Good. How are you?

MR. CONSIDINE: I'm doing well.

THE COURT: Good. All right. So you filed a Motion to Quash, correct?

MR. CONSIDINE: I filed a Motion to Dismiss for Habeas Corpus. And it's actually --

THE COURT: Well, I think that acts as a Motion to Quash.



1 MR. RASSIAS: That's my understanding.

2 MR. CONSIDINE: Essentially, yes. Same  
3 effect.

4 THE COURT: Sure. Okay.

5 MR. CONSIDINE: Your Honor, let me just  
6 give you the background of this case. What happened  
7 in this case is, there was a woman who had been  
8 subject to a search where it was claimed that there  
9 was cyanide gas in her house. It ended up, they did  
10 a search and there was no cyanide gas. And a  
11 Federal Judge found that the search was illegal, and  
12 there's a claim pending on that. The same day as  
13 the search, my client was upset about what happened.  
14 She was inside her house, she was angry. She was  
15 making statements, whatever, inside her house.  
16 Okay? And the video actually shows that it was  
17 inside the house. But this was not a situation  
18 where it was unprovoked. She was responding to a  
19 very real violation of her rights because the police  
20 they had. So she was angry about it. And she said  
21 some offensive things, but the preliminary hearing,  
22 they threw out terroristic threats, there was no  
23 threats of physical injury to anyone. There was not  
24 -- and if you look at (a)(3), which is a harassment  
25 statute, looking at that, first of all, there's no



1 evidence she struck, shoved --

2 THE COURT: Well, tell me what's remaining.  
3 You say terroristic threats was thrown out at the  
4 preliminary hearing. What is remaining?

5 MR. CONSIDINE: What's remaining is  
6 Harassment 2709(a)(3). And (a)(3) is engaging in a  
7 course of conduct, repeatedly committing acts  
8 which --

9 THE COURT: Is that an M3?

10 MR. CONSIDINE: (a)(3).

11 THE COURT: An M3?

12 MR. CONSIDINE: Yes, it's an M3. And then  
13 also Disorderly Conduct.

14 THE COURT: It is an M3, Mr. Rassias?

15 MR. RASSIAS: Yes, Your Honor.

16 MR. CONSIDINE: Those two.

17 THE COURT: Okay.

18 MR. CONSIDINE: Those two are --

19 THE COURT: And Disorderly Conduct?

20 MR. CONSIDINE: They're the only two  
21 pending.

22 THE COURT: As a misdemeanor or a summary?

23 MR. CONSIDINE: They're both as  
24 misdemeanors but I believe --

25 THE COURT: Okay.

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1                   MR. CONSIDINE: I'll get to the argument  
2                   about Disorderly Conduct, but I want to first start  
3                   with the -- with Harassment. And the only --

4                   THE COURT: Well, you have to argue from  
5                   the record.

6                   MR. CONSIDINE: Right. Argument from --

7                   THE COURT: Okay. You're arguing from the  
8                   record.

9                   MR. CONSIDINE: Right.

10                  THE COURT: Okay.

11                  MR. CONSIDINE: I'm arguing from the  
12                  record. And so she was inside her own house when  
13                  she did this. Now, they live in a twin, so this  
14                  prosecuting person lived on the other side. That  
15                  neighbor came, was outside the door and put a cell  
16                  phone up and started recording what she was saying  
17                  inside her house. And if you remember we had the  
18                  Motion to Suppress on that. And Your Honor saw the  
19                  video, if you remember, I know you have many cases,  
20                  but we were before Your Honor and we did opinion.  
21                  And that shows -- and this is on the record because  
22                  we already had a Motion to Dismiss, you already saw  
23                  the video. And video shows --

24                  THE COURT: Is that same video that you  
25                  submitted that I saw that day?

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1 MR. CONSIDINE: Yes.

2 THE COURT: Okay. Go ahead.

3 MR. CONSIDINE: If you remember that video,  
4 Your Honor, what happened is you've got --

5 THE COURT: Vaguely.

6 MR. CONSIDINE: -- you've got kind of  
7 little bit of light, like it's -- you can never see  
8 Karimu Hamilton in the video. Never can. Instead  
9 you hear her and it's obvious that someone is  
10 outside the door with a cell phone up against the  
11 door trying to record her. And that's essentially  
12 what happened. And -- but under those  
13 circumstances, you've got a privacy right of what  
14 someone says in their own home. It's very different  
15 than something out in public or whatever. So first  
16 of all in my pre-trial statement in the Motion to  
17 Dismiss I said requires repetition of the offensive  
18 conduct. This is a situation where she did say some  
19 things, but it wasn't a series of many other  
20 incidents, there was basically this one time. And  
21 she did not go to this prosecutor and witness over  
22 her house and do it. She didn't come to her face  
23 and do it. She's just expressing frustration that  
24 she'd been subject to an illegal search and saying  
25 some offensive things. No doubt. But, Your Honor,

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1 the Supreme Court in the *Plummer versus City of*  
2 *Columbus* case, from 1973, 414 US 2, says that a law  
3 stating no person shall abuse another by using  
4 menacing, insulting, slanderous or profane language  
5 violates the First Amendment. So there is a First  
6 Amendment right to even use offensive language if  
7 it's not further than what happened in this case.  
8 And there isn't. So just using insulting, menacing  
9 or profane language is not enough to establish  
10 harassment. It's not. That is protected speech  
11 under the First Amendment. And so here, also, if  
12 you look at the definition under 2709, you have to  
13 have a course of conduct or repeatedly committing  
14 acts. Now, acts or conduct is defined in 18 PACSA  
15 Section 103. This is in the Pennsylvania Code. And  
16 it says that an act is a bodily movement, whether  
17 voluntary or involuntary. We don't have any  
18 evidence that there was any bodily movement here.  
19 We just have speech. Conduct is an action or  
20 omission and its accompanying state of mind or a  
21 series of acts and omissions. So you have to prove  
22 repeated bodily movements, or a series of omissions  
23 and you cannot convict by oral communications in  
24 one's own home, even if it's offensive, because of  
25 our First Amendment. Which says that this is

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1       protected although it may even be offensive. And so  
2       here, all that they've shown, all that the record  
3       has is somebody saying these statements after they  
4       have been subject to an illegal search, saying  
5       frustrating offensive things, but still that's  
6       protected under the First Amendment. If you look  
7       though, under 5504, Harassment by Communication or  
8       Address, that requires that it be repeated  
9       communication anonymously, which is not here. We  
10      don't have someone calling someone on the phone and  
11      making statements anonymously. We have someone  
12      privately expressing frustration. For extremely  
13      inconvenient hours or offensively course language,  
14      we don't have that. That's usually phone calls,  
15      that kind of thing. We don't even have any evidence  
16      that this was something that was ever done in the  
17      face of the "victim". And there's actually a case,  
18      this whole law, 2709, is based on the New York Penal  
19      Law and there's a New York case that said that you  
20      cannot convict based only on offensive language.  
21      Especially if it's in someone's own personal home.  
22      People have arguments with their spouses all the  
23      time and they say whatever, that's not within the --  
24      and the court in that case I cited in the brief  
25      here, they said that that is not a course of conduct

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1 within the meaning -- even if someone says offensive  
2 words, it's not an act. An act requires bodily  
3 movement. There's no evidence of any bodily  
4 movement here. There's no evidence of conduct or  
5 act or omission. So we also have to find that the  
6 conduct was not legitimate and not constitutionally  
7 protected. And there is a constitutional protection  
8 for even offensive language unless it goes within  
9 the area of harassment. Also, this is only a single  
10 act. Essentially, a single act, it wasn't like the  
11 person, the next-door neighbor come over and said  
12 would you quiet down. Cut it out. I don't want to  
13 hear you. That didn't happen. Instead, she's just  
14 recording her when she's having this private time of  
15 saying things based on her frustration. But also,  
16 if you look at the *Commonwealth versus Battaglia*  
17 case in the Pennsylvania Superior Court 1999, the  
18 Court there said the Defendant was responding to bad  
19 treatment by another, which she perceived to be  
20 harassment, which is what happened here, and she  
21 wasn't herself being provocative, even if she said  
22 the word fucking sue, you can find that this is not  
23 harassment, because you look at the overall  
24 circumstances. The circumstances are this woman was  
25 the victim. She was the one who had the illegal

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1 search, and she was very frustrated and expressing  
2 her frustration. But also, here if you find under  
3 5503 a misdemeanor of the third degree if the intent  
4 of the actor is to cause substantial harm or serious  
5 inconvenience or persist in disorderly conduct after  
6 reasonable warning or request to desist. Otherwise,  
7 it's a summary offense. We don't have any warnings.  
8 The police didn't come and say listen, you better  
9 cut this out. She didn't say, listen, I don't want  
10 you to hear this anymore. Instead, she's secretly  
11 taping her, secretly taping her and therefore at the  
12 very worst, according to the Section B of 5503, this  
13 is not a misdemeanor. It's a summary at the very  
14 worst. But also, if you look at the second charge,  
15 it's a Disorderly Conduct, under Section 5503, the  
16 word public means affecting or likely to affect  
17 persons in place to which the public or substantial  
18 group has access, including highways, transport  
19 facilities, schools, prisons, apartment houses,  
20 place of business or amusement, any neighborhood, or  
21 any premises which are open to the public. This  
22 definitely does not qualify. This is within  
23 someone's home. And there's the highest amount of  
24 First Amendment protection for discretion if it's  
25 within someone's home. And this is clearly, if you

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1 saw the tape, it's within her home. There's no  
2 evidence on that tape that this was out on the  
3 porch, this was in the other person's home, this was  
4 outside. It wasn't. And there's no evidence that  
5 this conduct was likely to affect persons in a  
6 public place or cause risk of immediate breach of  
7 the public peace. And therefore, the record is  
8 clear that this is not Disorderly Conduct, because  
9 if you look at the case law, the Pennsylvania courts  
10 have protected much speech that is offensive, such  
11 as fuck you asshole, in *Pennsylvania versus Huck*  
12 *[ph]*, *Commonwealth versus Cody*, I cite the cases.  
13 This is also not obscene speech. Obscenities are  
14 not protected under the First Amendment, but merely  
15 saying offensive language is not obscenity. And  
16 there isn't any proof that there's any obscenity.  
17 But here, the words weren't really directed to  
18 anyone. It wasn't like she came to the person's  
19 face or something. Why didn't the neighbor just  
20 say, listen -- knock on the door and say listen, can  
21 you cut that out. It's bothering me. I don't want  
22 to hear it anymore. She didn't do that. She  
23 secretly is taping her. And I believe that that was  
24 a violation of the wiretapping law, but the Court  
25 found otherwise. But here, she's just venting.

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1 She's just venting. She's very frustrated and there  
2 was no intent to cause public inconvenience,  
3 annoyance, or alarm. There's not one person that  
4 heard it other than this neighbor. And this is not  
5 the kind of conduct that is going to cause any kind  
6 of public tumult. It's not within a public setting.  
7 No matter how distasteful or offensive to one's  
8 sensibilities it may be, this can't be punished  
9 merely because someone heard the words. And so this  
10 is similar to the conduct in the case of  
11 *Commonwealth versus Bryder [ph]* which I state where  
12 someone said go to hell, Betsy in public and that  
13 was found that that was not obscene, didn't appeal  
14 to peering interest, was not obscene and couldn't be  
15 punished. Here, there's no evidence that the  
16 language was obscene. And so we don't have any  
17 member of the public who said we were disturbed.  
18 This is in her own home. And Your Honor, I think  
19 this is a retaliatory prosecution because the  
20 Federal Court found it in this case, there were two  
21 illegal searches based on the lies of this person  
22 who said there was cyanide gas. There was no  
23 finding of gas on the property. The client was  
24 taken out of her house at 6:30 in the morning by  
25 police. There's another violation for that because

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1       it wasn't with due process. This woman herself is  
2       the victim. And since she has -- we're not saying  
3       that the conduct was not offensive, we're saying it  
4       doesn't fall within the law. Based on that tape  
5       that you saw, there is a record here. So the Court  
6       has no real choice but to dismiss here because first  
7       of all, they cannot make out Disorderly Conduct, but  
8       even Harassment, there's no bodily movement.  
9       There's no act here. This is just pure speech in  
10      someone's home. And that's protected under the  
11      First Amendment.

12               THE COURT: All right. Thank you very  
13      much. Mr. Rassias?

14               MR. RASSIAS: The Defendant's Motion to  
15      Quash should be dismissed for the following reasons.  
16      First, in support of this oral argument, the  
17      Commonwealth cites both the preliminary hearing  
18      transcript as well as the Motion to Suppress  
19      transcript. What brings us here today is -- my  
20      colleague on the Defense is correct, this is M3  
21      Disorderly Conduct and M3 Harassment. So in viewing  
22      the evidence in the light most favorable to the  
23      nonmoving party, that being the Commonwealth in this  
24      case, the evidence in the record shows that the  
25      Defendant in her own personal capacity, as

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1 Your Honor knows, that is an admission under 803  
2 Hearsay Law, automatically admissible. So every  
3 statement that she uttered in the course of that  
4 four-hour time period that both the victim heard and  
5 that the video memorializes are automatically  
6 admissible. She's using multiple -- I'm not going  
7 to say all the words, but multiple obscenities, not  
8 just traditional curse words, we'll put it that way.  
9 All of these are intended right directly to the  
10 victim. As Your Honor knows, they share a duplex  
11 together. This is one shared porch, right next to  
12 each other. And these -- all these arguments about  
13 whether or not there's a federal court case about a  
14 search, none of that is relevant for today. What  
15 Your Honor has to decide is whether or not -- and  
16 ultimately, what the Commonwealth would assert a  
17 jury has to decide, is whether or not the words that  
18 she uttered in her own personal capacity, again  
19 automatically admissible, were threatening, were  
20 disorderly and were harassing. The Commonwealth  
21 asserts they certainly were as the evidence shows  
22 such. For those reasons, this motion should be  
23 denied, and you should schedule it for a jury trial  
24 if Defense still seeks that.

25 THE COURT: Okay. Thank you.

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1                   MR. CONSIDINE: Your Honor, we would ask  
2                   that you do an opinion in this case?

3                   THE COURT: Pardon me?

4                   MR. CONSIDINE: I had a similar case where  
5                   I represented a preacher who was arrested for  
6                   preaching and the judge threw out the case on Habeas  
7                   Corpus due to public opinion. This is an important  
8                   issue of the First Amendment.

9                   THE COURT: Okay.

10                  MR. CONSIDINE: People have the right.

11                  THE COURT: I'm going to look at it. I'm  
12                  going to let you know my --

13                  MR. CONSIDINE: Okay. Thank you very much.

14                  THE COURT: -- answer. Hold on. Let me  
15                  give you a new date.

16                  MR. CONSIDINE: We would ask that you do an  
17                  opinion, Your Honor, because this is an important  
18                  issue --

19                  THE COURT: Do what?

20                  MR. CONSIDINE: We would ask that you do a  
21                  written opinion. This is an important issue under  
22                  the First Amendment, Your Honor. I believe there --

23                  THE COURT: All right.

24                  MR. CONSIDINE: -- is a First Amendment  
25                  right to even be angry and even curse. In the cases

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1 of the --

2 THE COURT: December 6. I'll give you my  
3 decision by December 6<sup>th</sup>.

4 MR. CONSIDINE: Thank you, Your Honor.

5 THE COURT: Thank you.

6 MR. RASSIAS: Thank you. Have a good day.

7 THE COURT: The same to you. Take care.

8 \*\*\*

9 [End of proceeding, 10:17 a.m.]

10



C E R T I F I C A T I O N

I, Richard Coogan, hereby certify that the proceedings and evidence are contained fully and accurately on multitrack recording; that the recording was reduced to typewriting by my direction; and that this is a correct transcript of the same.

\_\_\_\_\_  
Richard Coogan, Administrator  
Court Reporters

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COMMONWEALTH OF PENNSYLVANIA

v.

KARIMU HAMILTON

#5272-2019

BY:

Allison Babcock

\_\_\_\_\_  
Allison Babcock  
Transcriber for  
Diaz Transcription Services

The foregoing record of the proceedings upon the hearing of the above cause is hereby approved and directed to be filed.

\_\_\_\_\_  
Judge

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**J. MICHAEL CONSIDINE, JR., P.C.**

A Professional Corporation for the Practice of Law

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March 11, 2022

Karimu Hamilton

30 Garrett Drive

Rosemont, PA 19010

Re: Hamilton v. Flanagan, No. 19cv2588 (U.S.D.Ct., E.D.Pa.)

Dear Karimu

The case against the Ridgeways is the weakest of all the claims. Your existing claim includes damages for the grapevine. They state in their interrogatory answers that no officer told them to do anything or to say there was dangerous or cyanide gas on the premises. Flanagan will not testify he told them to say that or to lie. There is a greater than 50% chance the case against them will be won by them on summary judgment. The issue is not whether they did bad things or lied, but for federal jurisdiction is whether they conspired with state actors. The claim for the false arrest based on their calls about a woman with a knife I think are the strongest. Collecting on a judgment vs. the Ridgeways is risky. Many times it such judgments are never paid. What assets do they have? There is a real risk you will get nothing from them. It makes sense to attempt a pre-summary judgment resolution. May I make a demand they pay for the work on the pipe, move the fence and install a new grapevine plus pay some damages in exchange for your dropping the case and the criminal case be dropped. If you settle the case before the April 4 criminal trial you can possibly have Rachel's agreement not to testify in that trial part of a deal.

In the criminal case, you have been offered a deal of a summary for harassment which is not a criminal record. You risk a misdemeanor conviction which is a criminal record. I need to put you on the stand, to calmly and professionally explain why you said what you did and mention the illegal searches and federal court opinion. The jury may be biased, may not like you or you may lose her temper. Read the cases in my motion to dismiss to understand the law.

I recommend you give me authority to make an offer to settle against the Ridgeways as stated above. I stated this in my January 2022 letter to you to which you never responded.

Sincerely,

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<sup>1</sup> Admitted in Pennsylvania and Colorado

<sup>2</sup> Admitted in the Republic of Albania.



IN THE COURT OF COMMON PLEAS  
DELAWARE COUNTY, PENNSYLVANIA  
Commonwealth of Pennsylvania :No. Cp 23-Cr-000  
v. 5272-2019  
Karimu Hamilton

Defendant's OMNIBUS PRETRIAL MOTION

1. Motion for Discovery

Defendant seeks to obtain discovery of all documents, videotapes, audiotapes, the entire investigation file, evidence that there was dangerous gas on the premises at 30-32 Garrett, Bryn Mawr, PA in the period 2018-2020 and a list of the name and address of all witnesses who have knowledge of the matters regarding which Defendant has been charged with crimes in this matter.

2. Motion for Writ of Habeas Corpus

a. Facts. Defendant lives in a twin. On or about the same night the incidents giving rise to these charges occurred, it was alleged by her neighbor who lives in the other side of the twin that Plaintiff's residence contained dangerous cyanide gas so a warrant less search was done of Plaintiff's property. No such gas was found. PECO tested and no such gas was found. None was ever present. Two different warrantless searches occurred. In neither was any scientific evidence of cyanide or other gas found.

That same night, the neighbor, without the knowledge or consent of Defendant, used a cell phone or electronic recording device which she placed against the window or door of Defendant's residence to secretly record a private conversation or conversations Defendant had with a friend in which she expressed frustration that her home had been searched without a warrant based on false statements that there was dangerous gas. What Defendant said, in the privacy of her home in a normal speaking voice with a good friend, and was a type of communication about which there is a reasonable expectation of privacy. Nothing Defendant stated was to her neighbor in person. There were no threats of physical injury.

The Commonwealth seeks to use the audio and videotape of these intercepted conversations and/or the information obtained from them to prove harassment under 18 Pa. C.S.A §2709(a) and/or Disorderly Conduct under 18 Pa. C.S.A. §

b. Disorderly Conduct

**5503. Disorderly conduct is defined:**



**(a) Offense defined.**--A person is guilty of disorderly conduct if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he:

- (1) engages in fighting or threatening, or in violent or tumultuous behavior;
- (2) makes unreasonable noise;
- (3) uses obscene language, or makes an obscene gesture; or
- (4) creates a hazardous or physically offensive condition

**(5)** An offense under this section is a misdemeanor of the third degree if the intent of the actor is to cause substantial harm or serious inconvenience, or if he persists in disorderly conduct after reasonable warning or request to desist. Otherwise disorderly conduct is a summary offense.id §(b).

**Definition.**--As used in this section the word "public" means affecting or likely to affect persons in a place to which the public or a substantial group has access; among the places included are highways, transport facilities, schools, prisons, apartment houses, places of business or amusement, any neighborhood, or any premises which are open to the public.

Saying "fuck you asshole" to a police officer is not a crime in Pennsylvania as to a police officer was also not considered fighting words because it is expected that officers are exposed to emotionally charged events on a daily basis. Pennsylvania v. Hock, 728 A.2d 943 (1999) In Commonwealth v. Kelly, 758 A.2d 1284 (Pa. Super. 2000) words and conduct used were disrespectful, insulting and offensive, but not obscene within the meaning of the statute) as defined by the United States Supreme Court in Miller v. California 413 U.S. 15, 24 (1973) so the court reversed convictions for disorderly conduct either because the offensive words used were not "obscene." In Commonwealth v. Weiss, 490 A.2d 853, 855 (Pa. Super. 1985) Weiss was charged and convicted of violating subsection (a)(3) of the statute for directing allegedly obscene words to a police officer after the officer entered her home to arrest her husband. Weiss argued that because the words she used were directed to the officer inside her home, the state failed to prove that her words were uttered with the intent to cause "public inconvenience, annoyance or alarm, or recklessly creating a risk thereof .... In reversing her conviction on the grounds that the required intent under that statute was not established, the court distinguished Mastrangelo and Pringle as cases involving



speakers who made offensive statements in public settings. The court further distinguished Mastrangelo as a case brought under the "unreasonable noise" and not the "obscene language" provision of the statute. Even though a neighbor overheard the words Weiss used, the court held that vulgar language, "however distasteful or offensive to one's sensibilities" may not be punished merely because people nearby hear the words. Finally, the Court rejected an interpretation of the statute that would permit the punishment of offensive speech directed to police officers on grounds that such speech inflicts injury or causes officers to react in a violent manner to the speaker.

In Commonwealth v. Bryner 652 A.2d 909 (Pa. Super. 1995) Bryner was also convicted of using "obscene language" in violation of subsection (a)(3) of the statute. However, unlike the facts in Weiss, Bryner's language, "go to hell, Betsy" was made in public in the presence of several hundred people. On appeal, Bryner argued that his words were neither obscene nor "fighting words." In reversing Bryner's conviction, the court noted that the word "obscene" had not been defined by the Superior Court in Pringle. Adopting the United States Supreme Court's definition of obscenity in Miller v. California, the court held that because Bryner's words did not "appeal to anyone's prurient interests," they were not obscene within the meaning of subsection (a)(3) of the disorderly conduct statute. The court concluded that it was not necessary to consider whether Bryner's words constituted "fighting words" because the issue involves a "separate and distinct analysis" which it did not have to reach because "subsection (a)(3) of the statute is narrowly drawn to prohibit only obscene words or gestures."

In Oklahoma, a woman stating, "You're such an ass" and "You mother f-ers, you can't-you're not brave enough to go out and catch murders and robbers. You are a couple of pussies" to two police officers did not involve fighting words due to the increased restraint officers must use. Harrington v. City of Tulsa, 763 P.2d 700 (Okla. Crim. App. 1988) In United States v. Poocha, 259 F.3d 1077, 1078 (2001) the 9<sup>th</sup> Circuit found saying "fuck you" to a park ranger was not disorderly conduct as it was speech protected under the First Amendment. Given all the circumstances as a matter of law this was not harassment and the charges must be dismissed.

There is no evidence the public ever heard or could hear what was said in a private home in a private conversation. There is no evidence Defendant ever was asked to desist,



refused to desist or that she intended to cause serious harm or serious inconvenience. There is no evidence Defendant did anything in public or that there was intent to cause public inconvenience, annoyance or alarm, or that anything she did caused these or reasonably could have done so. The disorderly conduct charge must be dismissed because without public inconvenience or alarm, there is no crime. In the alternative, the charge must be reduced to a summary.

c. Harassment

Defendant is charged with harassment under Pa. C.S.A. §2709(a). There is no allegation or evidence she struck, shoved, kicked or subjected anyone to physical contact, or threatened to do the same, followed anyone in a public place, communicated repeatedly in an anonymous manner, repeatedly at inconvenient hours or in a manner other than specified in 18 Pa. C.S.A. §2709 (a) 4,5 or 6, so 18 Pa. C.S.A. 2709(a) (1), (2), (5), (6) and (7) do not apply.

Section (3) bans engaging in a course of conduct or repeatedly committing acts which serve no legitimate purpose. The tape shows Plaintiff was justifiably angry at what her neighbor had done based with false allegations of cyanide gas. Defendant was letting off steam. Her right not to have her property searched without a warrant were twice violated based on lies about there being dangerous gas on the premises made by the same person illegally taping her private conversations. It is name calling, done privately, not to the neighbor's face, but in one's own home to a third party, never repeated after the night this occurred. It served a legitimate purpose as a protest to illegal activity of bringing about two searches based on unsubstantiated lies. It was not even communicated to the neighbor but to a friend, privately on the phone. This is not harassment under section (3) because it had a legitimate purpose of private protest of illegal action.

Section (4) bans communicating to or about another person any lewd, lascivious, threatening or obscene words, language drawings or caricatures. No threats were made. Nothing lewd or lascivious was stated. Just the word "bitch," which while not polite, was stated. It is constitutionally protected speech which could not give rise to the charge of disorderly conduct or harassment when stated in public to a police officer. All these are protected speech: Calling a police officer a "son of a bitch" ([Johnson v. Campbell](#), 02-3580, USCA, 3<sup>rd</sup> Circuit June 05, 2003;



Yelling "fuck you all" to a police officer and security personnel at a nightclub ([Cornelius v. Brubaker](#), Minnesota District Court, 2003); Telling a police officer: "I'm tired of this God damned police sticking their nose in shit that doesn't even involve them" ([Brendle v. City of Houston](#), Court of Appeals of the State of Mississippi, 2000); Telling a security officer "This is bullshit" when roused from a parking lot ([U.S. v. McDermott](#), U.S.D.Ct., E.D.Pa.1997).

"Fuck the Draft," written on clothing is protected free speech. Cohen v. California 403 U.S. 15 (1971) . There is no harassment.

If needed, Defendant requests a hearing on the Motion for Writ of Habeas Corpus.

### 3. Motion to Suppress

It is a crime in PA to intercept or record a telephone call or conversation unless all parties to the conversation consent. 18 Pa. C.S. A. § 5703. Defendant did not consent. This was not in a public place but in one's home, a private conversation, so §5702 does not apply. The prosecution's only witness intentionally intercepted a wire, electronic or other communication of Defendant a felony of the third degree. 18 Pa. C.S.A. §5703. No court order was obtained to do so. The video and audio, and the contents of them were obtained in violation of Pa. Law. The legislature established a civil cause of action against the violator. 18 Pa. C.S.A. §5725(a). Even the commonwealth may be subject to civil liability; sovereign immunity is waived so its use by the prosecutor will subject it to civil liability. 18 Pa. C.S.A. §5725 (b). As the video and audio and their contents, and words and information gained from the illegal wiretapping, were obtained in violation of Pa law, that evidence must be suppressed as obtained in violation of express Pa. Law.

#### Law

##### 1. §5703 Requires Exclusion of Evidence.

§5703 requires exclusion of evidence seized in the course of a wiretap: "Except as proof in a suit or prosecution for a violation of this chapter, no evidence obtained as a result of a violation of privacy or breach of privacy of messages shall be admissible as evidence in any legal proceedings." As §5703 is not constitutionally mandated, it does not follow



that the sole legislative purpose of its "exclusionary" rule is the deterrence of police conduct.

2. The purpose of the law is to protect privacy. Commonwealth v. Murray, 423 Pa. 37, 52-53, 223 A.2d 102, 110 (1966) held:

"Were it not for the Act of 1957, irresponsible agencies could be emboldened to tap wires to obtain unauthorized information for the use of social scavengers, discredited business sharpers, and political buccaneers. They could pry into the most personal dealings and the most sacred relationships. . . . Without this guardian of our rights of privacy, every telephone user would have to conjure the possibility that the phantom hands of the electric eavesdropper could be clutching the very instrument into which he speaks. . . . Wire-tapping does not end with the mere listening operation. After the wire-leech has sucked in the blood of guarded secrets, he is then in a position to blackmail his unwary victim. He is in a position to traffic with corruption, threats and ill-gotten gains. That such a potential infamy could be tolerated in the name of the enforcement of the law would be the most extraordinary paradox in these paradoxical lines.

"The Pennsylvania Legislature has recognized all these perils and has legislated against them. It becomes the duty of the Courts to apply that legislation so that the Peeping Toms, the Paul Frys and the Meddlesome Charlies may not put to naught *the expressed will of the people in defending the dignity of man, the sanctity of family communication, and the liberty of its citizens.*"

Commonwealth v. Papszycki, 442 Pa. 234, 236, 275 A.2d 28, 29 (1971) held:

a person other than a receiver can [not] testify as to the contents of a telephone conversation if he overheard the call by means of an amplification device without the consent of the caller." The Court noted that Pennsylvania's prohibition against the use of wiretap evidence is absolute. "[T]he Legislature has determined as a matter of state public policy that the right of any caller to the privacy of his conversation is of greater societal value than the interest served by permitting eavesdropping or wiretapping. Such a determination, when within constitutional limits, is solely within the discretion of the Legislature."

442 Pa. at 239, 275 A.2d at 30.

A review of the legislative history of the 1957 act, reenacted in Chapter 57 of the Crimes Code, *supra*, reveals a similar uncompromising attitude towards the evidentiary use of wiretap information. During the debate, Representative FINEMAN stated that ". . . if the police can effectively undertake to do their work without the aid of wiretapping, then we should not give them such a right, when *giving them such a right means such*



*an insidious invasion of the rights which have been guaranteed to us, the right to be secure in our homes, in our personal thoughts and in our personal papers."* Legislative Journal, 1957, Vol. II, p. 1686. (Emphasis added). Other representatives expressed concern that wiretapping was a substitute for good police work, and that such a practice is contrary to our basic concept of freedom. The history indicates that the Legislature did not seek primarily to deter the police, but rather intended to protect Pennsylvania citizens' privacy from any electronic intrusion. While research has revealed no case precisely on point, the California Supreme Court has recently resolved an analogous problem. In *People v. Jones*, [30 Cal.App.2d 852](#), [106 Cal.Rptr. 749](#) (1973), the United States Attorney received twenty tapes recorded pursuant to a wiretap authorized under the Omnibus Crime Control Act, *supra*. The U.S. Attorney then gave the tapes to the San Diego District Attorney who then presented them to a grand jury. The evidence was suppressed and the Court in *Jones* upheld the suppression under the [California Penal Code, § 631](#), which is identical to § 5702 and 5703. After holding that the Omnibus Crime Control Act does not pre-empt the field of legislation, the Court held that the state's prohibition was absolute and despite the legality of the wiretap under federal law, that legality did not render the tapes admissible in state court. Accord, *United States v. Turner*, 17 Crim.L.Rptr. 2449 (9th Cir. July 24, 1975).

Section 5703 was not aimed solely at deterring Pennsylvania police practices; rather, it expressed hostility to wiretap evidence. A recording is not admissible [if] obtained in violation of the Wiretap Act and that act makes no exceptions for admissibility of illegal interceptions. *Commonwealth v. DeBlase*, [357 Pa.Super. 71](#), [515 A.2d 564](#) (1986). The



Supreme Court of Pennsylvania has addressed this issue in a similar circumstance. In *Commonwealth v. Brachbill*, [520 Pa. 533](#), [555 A.2d 82](#) (1989), the court addressed the admissibility of a police officer's testimony regarding a conversation he "intercepted" while listening on an extension. He had the permission of one party to do so. The court concluded that the contents of such an illegal interception in violation of the Wiretap Act should be suppressed. The court premised this conclusion on the legitimate expectation of privacy in our society. *Brachbill*, citing *Alderman v. United States*, [394 U.S. 165](#), 89 S.Ct. 961, 22 L.Ed. 2d 176 (1969); *Commonwealth v. Helms*, [234 Pa.Super. 537](#), 343 A.2d 362 (1975). The court found that even if one party may possibly have voluntarily participated in the interception, that alone cannot override a clear violation of the Wiretap Act. Therefore, if an interception by a police officer, which does have some indicia of reliability, must be suppressed, an interception in the sole control of a defendant cannot be deemed admissible. *Com v. Mathis*, 10 Pa. D. & C. 4th 1 (1991)

The act applies to oral communications and electronic and wire communications but not to public area video recording. *Pa. State Police v. Grove*, 199 A. 3<sup>rd</sup> 292 (2015).<sup>1</sup>

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<sup>1</sup> The Wiretap Act does not apply to oral communications where the speaker has notice of the recording. *Grove*, 119 A.3d at 1110, citing 18 Pa.C.S § 5702 (defining "[o]ral communication" as "[A]ny oral communication uttered by a person possessing an expectation that such communication is not subject to interception under circumstances justifying such expectation"); *Com. v. Henlen*, 522 Pa. 514, 564 A.2d 905, 906–07 (1989); *Gunderman v. UCBR*, 95 Pa.Cmwlth. 479, 505 A.2d 1112, 1115 (1986). It held:

Trooper Thomas's MVR included communications between the troopers themselves (who cannot possibly have had an expectation their conversations were not subject to interception), and between the troopers and the witnesses and drivers...these other speakers also could not have had a justifiable expectation their conversations would not be intercepted, and accordingly, the MVRs do not contain any "oral communications" protected under the Wiretap Act. The conversations occurred in broad daylight at the scene of an accident on a public roadway, to which state police officers responded. The conversations took place within earshot and easy view of bystanders or passersby. In fact, Grove's position statement



While telephone conversations used in the ordinary course of business are exempt, Com. v. Spence, 625 Pa. 84, 91 A. 3<sup>rd</sup> 44 (2014) the act applies to private phone conversations.

Com. v. Deck, 954 A. 2<sup>nd</sup> 603 (Pa. Super. 2008)where:

a minor...sought to prove Deck was having sexual relations with her...[she] telephoned Deck at his place of work. Deck was in his office with the door open when he took [her] call. At the start of the conversation [she] told Deck she had placed him on the speaker phone. Without Deck's knowledge or consent, [she] recorded the conversation on a cassette tape in an answering machine. ..[She gave the tape to police.]...the trial court's granted Deck's motion and suppressed the tape recording. The trial court determined that the telephone conversation was a wire communication under Section 5702 of the Wiretap Act, and that as such, was protected from interception under Section 5703...because the Act focuses on the protection of privacy, its provisions must be construed strictly. Com. v. Spangler, 570 Pa. 226, 809 A. 2<sup>nd</sup> 234, 237 (2002)...5702's definition of wire communication does not include an expectation of privacy on the part of the speaker as does its definition of oral communication...we conclude that Section 5703 of the Wiretap Act prohibits the interception, disclosure or use of a telephone conversation as a wire communication under Section 5702, even if the telephone conversation is not an oral communication under Section 5702...5703 prohibited the interception, disclosure or use of the telephone conversation between C.P. And Deck...Deck's expectation of privacy is irrelevant...order affirmed. Id, 605-610.

Com. v. Diego, 119 A. 3<sup>rd</sup> 370 (Pa. Super 2015) held:

an iPad is an electrical, mechanical or other device that does not fall within the telephone exception under the Wiretap Act...when engaging in a conversation over the telephone, a party would have no reason to believe that the other party was taping the conversation. Con. v. Proelto, 771 A. 2<sup>nd</sup> 823, 829 (Pa. Super. 2001)...police did not obtain a recording of that conversation from Appellee at all. Thus the heightened expectation of privacy recognized in Riley v. California, 134 S. Ct. 2473 (2014) is not applicable. Telephone conversations are wire communications which unlike oral communications are protected against interception without regard to the speaker's expectation of privacy. Briggs v. American Air Filter Co., Inc., 630 F. 3<sup>rd</sup>, 417 n. 4 (5<sup>th</sup> Cir. 1980)...if an intercept did not occur during the transmission of the message, or at least simultaneous to the receipt of the message, then we must conclude that no intercept occurred at all. Id at 375-376, 379, 381.

Com.v. Brion, 539 Pa. 256, 261, 652 A.2d 287, 289 (1994) held:

an individual can reasonably expect that his right to privacy will not be violated in his home through the use of any electronic surveillance ... With respect to oral communications occurring within one's home, interception [when one party has consented] can only be deemed constitutional under [the Pennsylvania Constitution] if there has been a prior determination of probable cause by a neutral, judicial authority." Brion, *supra*, at 261, 652 A.2d at 289 (1994)

Oral conversations have a reasonable expectation of privacy. Com. v. Crittenden, 976 A. 2<sup>nd</sup> 1176 (Pa. Super 2009)

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submitted to the OOR includes her own observations and even her paraphrasing of the conversations between the drivers and the troopers...It is clear the individuals at the scene could have had no reasonable expectation of privacy, or any justifiable expectation that their statements and images were not being



Recording a private conversation at a person's home violates §5703, Com. v. Kuder, 62 A. 3<sup>rd</sup> 1038, 1046 (Pa. Super. 2013), especially if it is done to record a person's private statements and that person was unaware of the recording, Matenkowski v. Green, 213 A. 3<sup>rd</sup> 1018, 1030 (Pa. Super. 2019), or if is done on the porch of someone's home in a rural area. Com. v. Myers, 450 Pa. Super. 482, 676 A. 2<sup>nd</sup> 662, 665 (1996).

Recording with a cell phone violates §5703, Com. v. Kline, 177 A. 3<sup>rd</sup> 922 (Pa. Super. 2017), including the use of a smart phone to record surreptitiously (as the smart phone is not then being used as a telephone but as a tape recorder, for it is the recording that is banned), Com. v. Smith, 136 A. 3<sup>rd</sup> 170, 174, 176, 178 (Pa. Super. 2018), and use of an electronic baby monitor and receiver in conjunction with a tape recorder of other private parties in an apartment, Com. v. Parrella, 416 Pa. Super. 131, 610 A. 2<sup>nd</sup> 1006, 1007 (1997). Where recording is with a cell phone, there need not be proof of a reasonable expectation of privacy. Com. v. Rosa, 21 A. 3<sup>rd</sup> 1264, 1269 (Pa. Super. 2011)

Com. v. Parrella, supra, held:

Appellee and decedent only lost their reasonable expectation or privacy as to the limited portions of her conversation which were overheard outside the apartment without the aid of an improvised interception system. The appellant and decedent did not lose their reasonable expectation of privacy to all of their conversation that occurred in their apartment on the January 19-20, 1990 night merely because some portions of their conversation were able to be heard outside the apartment. If we were to adopt the Commonwealth's argument, we would be enabling any eavesdropper to immediately begin the unconsented mechanical or electronic amplification and interception of that conversation of anyone in the home once a portion of their conversation was able to be overheard outside the home with the naked ear. Clearly, this was not the result intended by the legislature when they adopted the act, whose primary focus and purpose was the protection of privacy. Thus, we find no merit in the Commonwealth's assertion that Ms. Horner and Ms. Feldbauer were entitled to surreptitiously record all of the conversation between Appellee and decedent which occurred inside the apartment January 19-20,

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captured on MVRs, or by any number of cellphones for that matter. Under the circumstances, we conclude disclosure of the MVRs pursuant to the RTKL does not violate the Wiretap Act.



1990 because limited portions of the conversation inside the apartment were overheard by persons outside the apartment...the conduct of Horner and Feldbauer clearly violated the act.

supra, 610 A. 2<sup>nd</sup> at 1010-1011. This means Ridgeway and her husband may testify as to what they heard with the naked ear even if the recording is suppressed.

3. The Independent Source Doctrine Does Not Apply

Under 18 Pa. C.S.A. 5721.1(c)(6) Evidence shall not be deemed to have been derived from communications excludable under subsection (b) if the respondent can demonstrate by a preponderance of the evidence that the Commonwealth or the respondent had a basis independent of the excluded communication for discovering such evidence or that such evidence would have been inevitably discovered by the Commonwealth or the respondent absent the excluded communication. Com. v.

Melendez, 676 A.2d 226 (Pa. 1996) held:

application of the ‘independent source doctrine’ is proper only in the very limited circumstances where the ‘independent source’ is truly independent from both the tainted evidence and the police or investigative team which engaged in the misconduct by which the tainted evidence was discovered.”

Id. at 231. The interceptor and hearer of the evidence was the same person. She was spying on Defendant and got this evidence. There is no evidence she asked Plaintiff to stop or told her about this secret interception. The video and audio must be suppressed and the interceptor must not be permitted to testify as to what she heard and what she recorded.

4. Continuance

Defendant very recently retained her counsel. She seeks a continuance so discovery may be obtained and the court may consider the matters in the Omnibus Pretrial Motion and a pretrial conference as per Rule 578, Pa. R.Cr. Procedure.

Date: August 28, 2020

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J. Michael Considine, Jr.  
Pa. Attorney I.D. #37294



J. Michael Considine, Jr., P.C.  
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Counsel for Defendant Karimu Hamilton

CERTIFICATE OF SERVICE

I, J. Michael Considine, Jr., hereby certify that I sent a true and correct copy of the Omnibus Pretrial Motion to the Office of the District Attorney, 201 W Front St, Media, PA 19063 by first class mail.

Date: August 28, 2020

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J. Michael Considine, Jr.



IN THE COURT OF COMMON PLEAS  
DELAWARE COUNTY, PENNSYLVANIA  
Commonwealth of Pennsylvania :No. Cp 23-Cr-000  
v. 5272-2019  
Karimu Hamilton

Defendant's Motion for Habeas Corpus and to Dismiss

A. Facts. Defendant lives in a twin. On the same night or night before the incident giving rise to these charges occurred, it was alleged by her neighbor who lives in the other side of the twin that Defendant's residence contained dangerous cyanide gas. A warrant-less search was done of her premises. PECO tested and no such gas was found. None was ever present. Two different warrantless searches occurred. In neither was any scientific evidence of cyanide or other gas found. Claims for illegal searches were established. Hamilton v. Radnor Township, 502 F. Supp. 3<sup>rd</sup> 978 (E.D.Pa. 2020). The neighbor, without the knowledge or consent of Defendant, used an electronic recording device which she placed against the window or door of Defendant's residence to secretly record a private conversation Defendant had or words she said herself in which she cursed and expressed frustration that her home had been searched without a warrant based on false statements that there was dangerous gas. See attached video. It was not said to the neighbor's face or with knowledge the neighbor was taping and nowhere made threats of injury, just expressions of frustration. What she said, in her own home in a normal speaking voice and to herself, and was a type of communication about which there is a reasonable expectation of privacy. The neighbor never asked her to stop nor did Defendant refuse any request of the neighbor. Nothing Defendant stated was to her neighbor in person. This is pure speech, without any accompanying acts, protected under the First Amendment.

B. Law and Argument

1. Defendant is charged with harassment under Pa. C.S.A. §2709(a). There is no evidence she struck, shoved, kicked or subjected anyone to physical contact, or threatened to do the same, followed anyone in a public place, communicated repeatedly in an anonymous manner, repeatedly at inconvenient hours or in a manner other than specified in 18 Pa. C.S.A. §2709 (a) 4, 5 or 6, so 18 Pa. C.S.A. 2709(a) (1), (2), (5), (6) and (7) do not apply.

2. Section (3) bans engaging in a course of conduct or repeatedly committing acts which serve no



legitimate purpose. It requires repetition of the offensive conduct. Com. v. Duncan, 239 Pa. Super. 539, 363 A. 2<sup>nd</sup> 803 (1976) Repeated requests to cease and refusals to do so show intent to harass. There were no such requests. §2709 was enacted to prohibit conduct not constitutionally protected which is intended to alarm or seriously annoy another person. *Id.*, 545-547. The legislature sought to prevent not the initial impact of unwelcome intrusions upon privacy, but rather repeated assaults on individual privacy interests. In Duncan, Defendant invited the prosecutrix to her face to engage in oral sex repeatedly, lewd and illegal activity, not expressing social or political beliefs or engaging in any legitimate conduct. The court found he was going beyond communication to invade a substantial privacy interest in an intolerable manner. Here, there was no face-to-face communication. Instead there were expressions of frustration based on the neighbor's calling police for an illegal search based on lies, which is legitimate conduct even if distasteful.

3. A law stating "no person shall abuse another by using menacing, insulting, slanderous or profane language" violates the First Amendment, Plummer v. City of Columbus, Ohio, 414 U.S. 2, 3 (1973) and the court will not give it a narrowed construction. The court must read §2709 so it does not prohibit protected expression. The language here is protected because it is in her home, in reasonable response to a very real invasion of her home.

4. The behaviour banned by §2709 is course of conduct or repeatedly committed acts. The term "act" and "conduct" are specifically defined in the Preliminary Provisions of the Crimes Code, 18 Pa. C.S.A. §103, as follows: Act or action: A bodily movement whether voluntary or involuntary. "Conduct": an action or omission and its accompanying state of mind, or, where relevant, a series of acts of omissions." A conviction under subsection 3 requires a showing of repeated bodily movements or a series of omissions; oral communications alone are by definition insufficient. §5504, Harassment by Communication or Address, provides "A person commits a misdemeanor of the third degree if with intent to harass another, he (2) makes repeated communications anonymously or at extremely inconvenient hours or in offensively coarse language." §2709 was adopted verbatim from §240.25 of the New York Penal law, L 1965, c. 1030; amended 1967, c. 791, §41. eff. Sept. 1, 1967. The New York courts have interpreted their counterpart of section 3 to exclude situations of offensive language only. In People v. Paradisio, 58 Misc. 2<sup>nd</sup> 370, 295



N.Y.S. 2<sup>nd</sup> 561 (1968), Defendant allegedly used abusive and offensive language at the home of complainant. The court held that such behaviour does not fall within the counterpart of subsection 3 since the definitional section "of the penal law defines 'act' as a bodily movement and 'conduct' as an act or omission and its accompanying mental state. It appears therefore that the use of abusive and obscene language is not an act within the meaning of the Penal law or a course of conduct within the meaning of the same. It is therefore no prosecutable except where expressly provided under the penal law." 58 Misc. 2<sup>nd</sup> at 374, 295 N.Y.S at 564-565. Com. v. Duncan, supra, (Spaeth, dissenting). Here there were no acts only speech.

5. Conduct must be nonlegitimate and not constitutionally protected. Com. v. Miller, 455 Pa. Super. 534, 689 A. 2<sup>nd</sup> 238 (1997). Complaining about an illegal search is legitimate speech even if it involves name-calling.

6. A single act is not enough to be considered a course of conduct. Com. v. Zullinger, 450 Pa. Super. 533, 676 A. 2<sup>nd</sup> 682 (1996); Com. v. Lutes, 793 A. 2<sup>nd</sup> 949 (Pa. Super. 2002); Com. v. Battalgia, 725 A. 2<sup>nd</sup> 192 (Pa. Super. 1999); Com. v. Sewell, 702 A. 2<sup>nd</sup> 570 (Pa. Super 1997). This is a single act of complaining.

7. Where Defendant was responding to bad treatment by another which she perceived as harassment, not provocative, even saying he would "fucking sue," this is not harassment. Com. v. Battalgia, 725 A. 2<sup>nd</sup> 192 (Pa. Super. 1999). Here Defendant was responding to the bad treatment by her neighbor.

#### **8. 5503. Disorderly conduct:**

**(a) Offense defined.**--A person is guilty of disorderly conduct if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he:

- (1) engages in fighting or threatening, or in violent or tumultuous behavior;
- (2) makes unreasonable noise;
- (3) uses obscene language, or makes an obscene gesture; or
- (4) creates a hazardous or physically offensive condition

**(5)** An offense under this section is a misdemeanor of the third degree if the intent of the actor is to cause substantial harm or serious inconvenience, or if he persists in disorderly conduct after reasonable warning or



request to desist. Otherwise disorderly conduct is a summary offense.id §(b).

**Definition.--**As used in this section the word "public" means affecting or likely to affect persons in a place to which the public or a substantial group has access; among the places included are highways, transport facilities, schools, prisons, apartment houses, places of business or amusement, any neighborhood, or any premises which are open to the public.

There is no evidence of public inconvenience or that anyone outside could hear this. Speech inside one's house not disrupting the public in reaction to an illegal search of her premises is not disorderly conduct. In Com. v. Gillis, 61 Pa. D & C 4<sup>th</sup> 42 (2002), the court granted a similar motion as a campus preacher who used name calling in a debate with a person heckling his message had protected speech. The court granted the habeas corpus petition.

WHEREFORE, Defendant requests that all charges be dismissed because the speech without any "acts" here was protected under the First Amendment. In the alternative, Defendant requests that the Disorderly Conduct charges be dismissed because there is no evidence or public inconvenience or tumult.

Date: September 8, 2021

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J. Michael Considine, Jr.  
J. Michael Considine, Jr., P.C.  
1845 Walnut Street, Suite 1199  
Philadelphia, PA 19103  
(215)564-4000  
Counsel for Defendant Karimu Hamilton

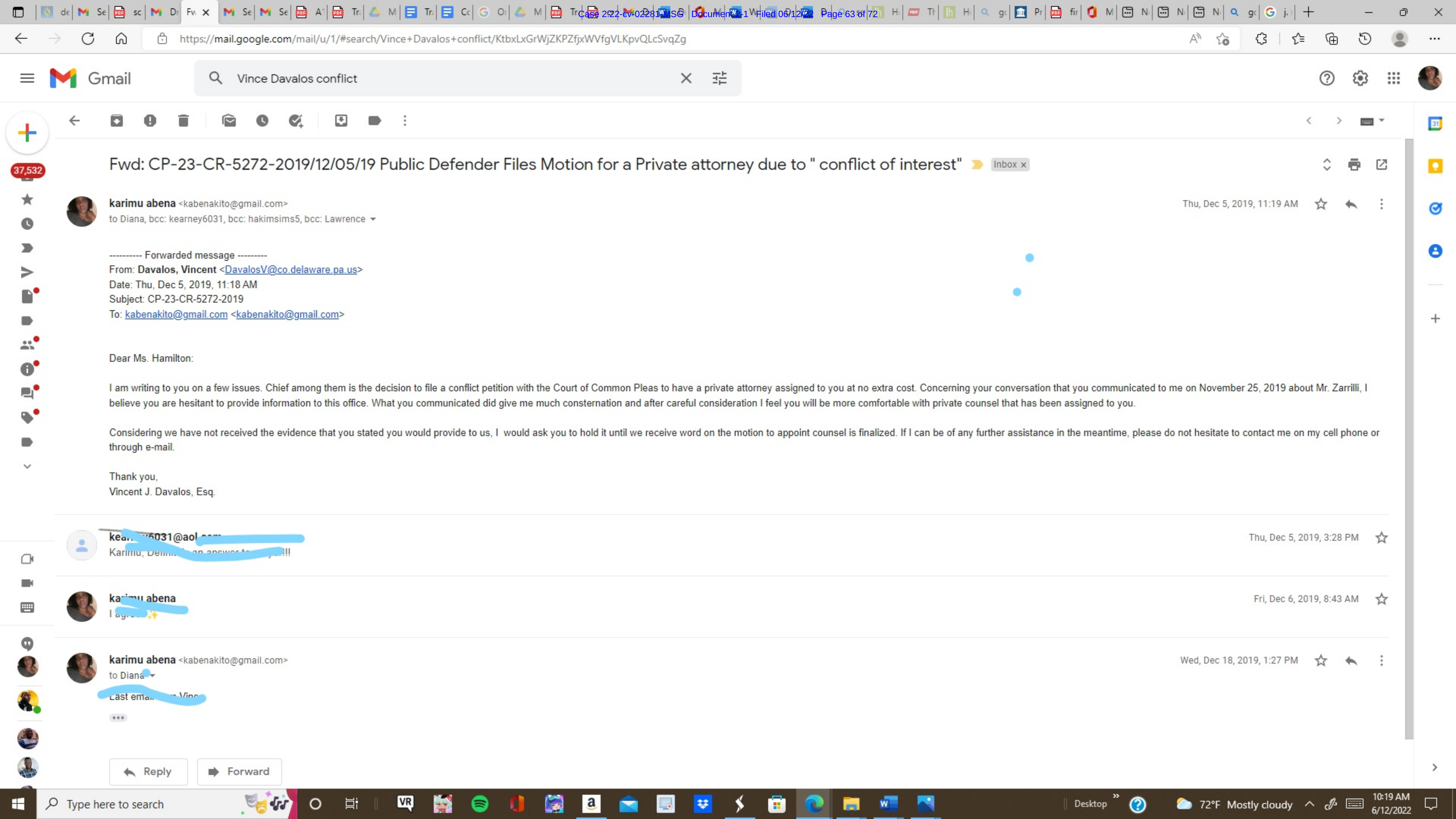
CERTIFICATE OF SERVICE

I, J. Michael Considine, Jr., hereby certify that I sent a true and correct copy of the Motion for Habeas Corpus and to Dismiss to Jerry Rassias, Assistant District Attorney, Office of the District Attorney, 201 W Front St, Media, PA 19063 by first class mail.

Date: September 9, 2021

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Fwd: CP-23-CR-5272-2019/12/05/19 Public Defender Files Motion for a Private attorney due to " conflict of interest"

Inbox x



karimu abena <kabenakito@gmail.com>

to Diana, bcc: kearney6031, bcc: hakimsims5, bcc: Lawrence

Thu, Dec 5, 2019, 11:19 AM

----- Forwarded message -----

From: Davalos, Vincent <DavalosV@co.delaware.pa.us>

Date: Thu, Dec 5, 2019, 11:18 AM

Subject: CP-23-CR-5272-2019

To: kabenakito@gmail.com <kabenakito@gmail.com>

Dear Ms. Hamilton:

I am writing to you on a few issues. Chief among them is the decision to file a conflict petition with the Court of Common Pleas to have a private attorney assigned to you at no extra cost. Concerning your conversation that you communicated to me on November 25, 2019 about Mr. Zarrilli, I believe you are hesitant to provide information to this office. What you communicated did give me much consternation and after careful consideration I feel you will be more comfortable with private counsel that has been assigned to you.

Considering we have not received the evidence that you stated you would provide to us, I would ask you to hold it until we receive word on the motion to appoint counsel is finalized. If I can be of any further assistance in the meantime, please do not hesitate to contact me on my cell phone or through e-mail.

Thank you,  
Vincent J. Davalos, Esq.



kearney6031@aol.com

Karimu, Dennis... an answer to you!!!

Thu, Dec 5, 2019, 3:28 PM



karimu abena

I agree 🌟

Fri, Dec 6, 2019, 8:43 AM



karimu abena <kabenakito@gmail.com>

to Diana

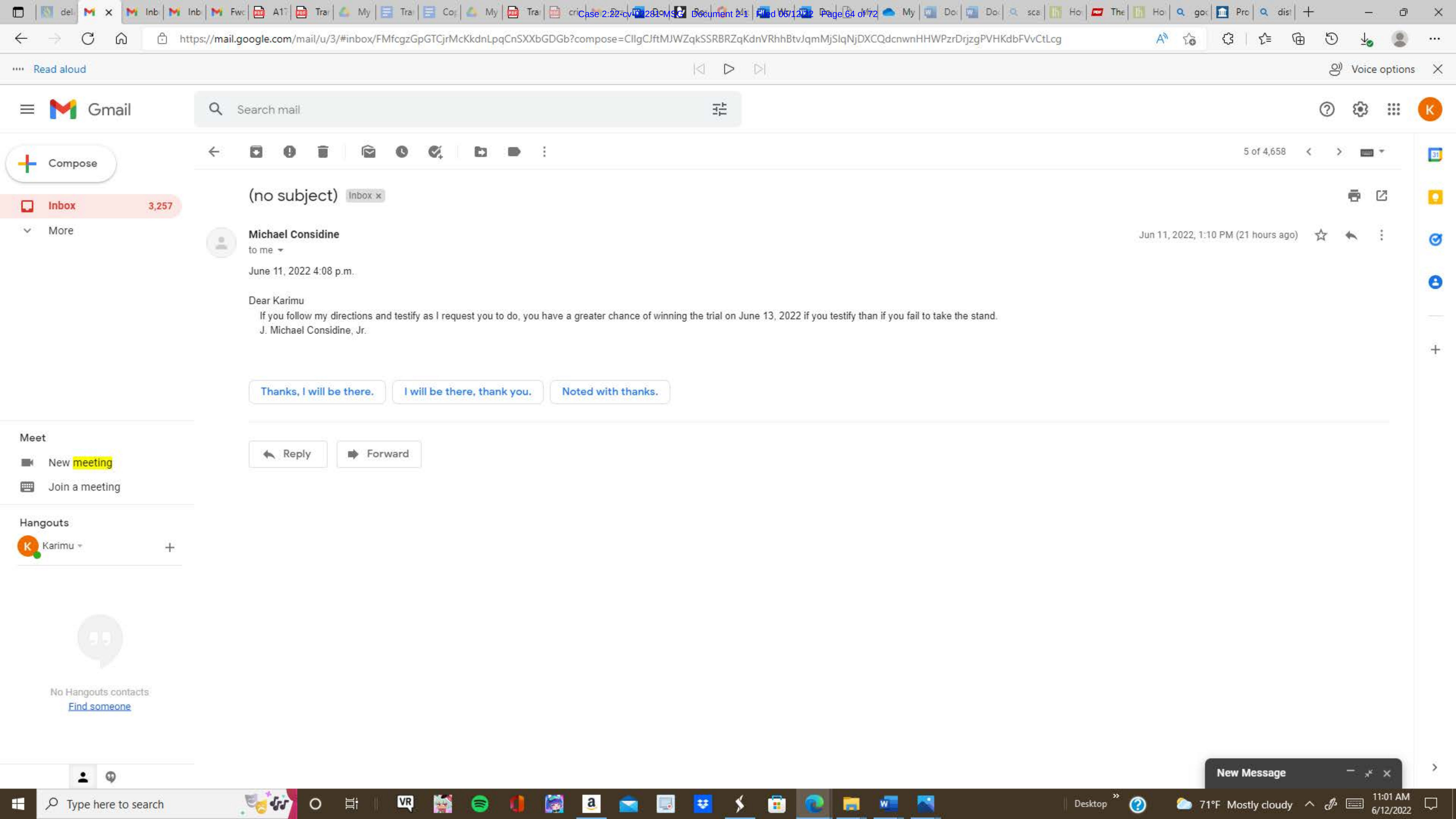
Last email from Vince

Wed, Dec 18, 2019, 1:27 PM

Reply

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Gmail

Search mail

Compose

Inbox 3,257

More

Meet

New meeting

Join a meeting

Hangouts

Karimu +

No Hangouts contacts  
[Find someone](#)

(no subject) Inbox x



Michael Considine  
to me

June 11, 2022 4:08 p.m.

Dear Karimu

If you follow my directions and testify as I request you to do, you have a greater chance of winning the trial on June 13, 2022 if you testify than if you fail to take the stand.  
J. Michael Considine, Jr.

Thanks, I will be there.

I will be there, thank you.

Noted with thanks.

Reply

Forward

New Message



**June 12, 2022**

**Notice of Removal**

**Commonwealth vs. Hamilton**

**No. 5272\_2019**

**Submitted by Karimu Hamilton –on her own behalf –  
pro-se**



## **Supportive Documents**

**1.Screenshot 311-314 Criminal Procedural Documents**

**2.Transcript 1 –Preliminary Hearing**

**3. Transcript2- Defense Motion to Dismiss PDF-A17208**

**4. Hamilton 03/11/2022-letter from attorney stating  
summary offense is not a criminal record**

**5.Omnibus pre-trial motion to dismiss**

**6. 2<sup>nd</sup> Motion to Dismiss**

**7. Informa Pauperis application**

**8. Public Defender conflict of interest letter**

**9. Letter from Considine on 6/11/2022 destructive  
defense plan**



## **CASE BACKGROUND**

On June 12<sup>TH</sup> Rachel Ridgeway came to the Radnor Township Police Department regarding an alleged incident which occurred on June 8<sup>th</sup> 2019 somewhere between 1700 hours to 2130 Ridgeway states that Hamilton was in front of her door yelling obscenities. At the preliminary hearing stage of this proceeding on cross examination Ridgeway insists that she was afraid, had no reason to leave her home. She remained in her home as defendant stood in front of her door and yelled obscenities. At the Omnibus –pretrial and Motion to dismiss hearing Defendant submitted a motion to suppress evidence. Defendant advised to the court that the evidence submitted was an illegal wiretapping. The evidence submitted shows the opposite of her testimony. It shows the Plaintiff, walking outside of her home over to the Defendants porch door to record an audio/video with her phone. A second Motion to dismiss submitted because none of the



Criminal Charges are in concert with what actually happened. Both Motions to Dismiss were denied by Judge Brennan.

## **GOOD CAUSE FOR UNTIMELY REMOVAL & GROUNDS**

**Covid –19** pandemic the Commonwealth was scheduling updates every 6 months and Defense was coerced into waiving rights to speedy trial.

**Malpractice. Misrepresentation and Neglect on behalf of Attorney's.**

**Lawyers-** Defendant has had three attorneys a **Public Defender** Vince Stavalos and Daniel Pallen. Public Defender Staff member Virilli at the time explained to me that there that their loyalty was not to the Constitution but to the Courts. The Delaware County Public Defender's Office recommended a Private State Attorney.

**Daniel Pallen** Though the evidence, recording was obtained illegally via, trespassing and an illegal wiretapping, Pallen refused to acknowledge the “condition” of the evidence.



Daniel Pallen still recommended that I take a plea deal versus arguing on behalf of the side of the law.

**Michael Considine** also engaged in mal- practice and has been a barrier to justice. He misleads the defendant to believe that “removal” to Federal court was not an option. He put the defendant on the stand to testify against her will and the Commonwealth of Pennsylvania via the district attorney's office considers this to be an admittance under the 803-hearsay law. (doc2) and want to now remove the evidence and base the case on the testimony of the Defendant. Considine has stated that he will not cross examine Rachel Ridgeway on the facts of the case. He will refuse to communicate to or demonstrate the pattern of lies that Rachel Ridgeway has displayed. In both the preliminary hearing transcript and the Omnibus pretrial hearing Ridgeway states she was inside of her home and was afraid to come outside. The evidence submitted shows her outside of defendant's front door with an audio video recording device. Though he has submitted motions on behalf of defendant. He still recommends that Defendant accept a “deal”. She trespassed onto Defendants property (which she has a history of doing Hamilton vs. Radnor) He has pivoted and recommended that the defendant accept a “deal”. He also lied and attempted to mislead the Defendant that the offer would not cause harm, injury in the form of a Criminal record. If a lawyer misleads a client about the nature of criminal charges, he cannot be trusted. He is working in concert with the prosecution and not in concert with the constitution. Though



Ridgeway is the apparent criminal in this matter Considine still recommends Defendant for charges within his defense.

### **Judges.**

Presiding Judge Brennan is a Senior Judge and well respected among her peers within the Delaware County State Court System. She is pro police and is a Prosecutorial Judge. She denied two motions to dismiss without providing grounds for her dismissal. In the first motion to the dismiss the Defense pleaded with the state courts that disorderly conduct requires Defendant to be outside. (doc5) However Judge refuses to rule on the side of the law. Judge Brennan has a bias against the defense not based on the law but on a personal beliefs and ideals. Judge Brennan coerced defense into waiving her right to speedy trial. stating that it was the “law”. She is guiding the next generation of legal professionals on how to deny defendant equal protection of the law within the court system.

### **Delaware County District Attorney's Office**

Brttany Green- ADA- Katayoun Copeland District Attorney

Heather Hayes ADA- Jack Stollsteimer

Jerry Rassias ADA- Jack Stollsteimer

The listed ADAs argue that despite the fact that their witness Ridgeway has lied about the circumstances and conditions of the evidence. They are still vigilant about commencing a proceeding for Disorderly Conduct and Harassment and



believe that it is legal to provide to the state courts an illegal wiretapping as evidence & to charge defendant with a crime that does not coincide with what actually took place. This is because of their leadership; they are being taught how to violate the legal rights of the Defendant.

### **Legal Grounds§ 1443. Civil rights cases**

Any of the following civil actions or criminal prosecutions, commenced in a state court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;



(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law